

2003 SENATE BILL 277

October 13, 2003 – Introduced by Senators HARSDORF and DECKER, cosponsored by Representatives PETTIS, AINSWORTH, SERATTI and HINES. Referred to Committee on Higher Education and Tourism.

1 **AN ACT** *to amend* 20.370 (1) (ms), 20.370 (5) (cu), 23.33 (1) (if), 23.33 (2) (a), 23.33
2 (2) (c), 23.33 (2) (d), 23.33 (2) (dm) 2., 23.33 (2) (e), 23.33 (5) (c), 23.33 (13) (b)
3 (title), 23.33 (13) (b) 2. and 25.29 (1) (dm); **to repeal and recreate** 23.33 (5) (b);
4 and **to create** 20.380 (1) (r), 23.33 (2j), 23.33 (6m), 23.33 (13) (ar), 23.33 (13) (bg)
5 and 23.33 (13) (br) of the statutes; **relating to:** intoxicated operation of
6 all-terrain vehicles, registration fees for all-terrain vehicles, nonresident trail
7 passes for all-terrain vehicles, safety training for operating all-terrain
8 vehicles, a study concerning the recreational operation of all-terrain vehicles,
9 noise level requirements for all-terrain vehicles, the formula used for
10 calculating the all-terrain vehicle gas tax payment, granting rule-making
11 authority, making appropriations, and providing penalties.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Natural Resources (DNR) administers the laws relating to the operation and registration of all-terrain vehicles (ATVs) and to providing funding for ATV projects, such as trails, and for ATV vehicle safety. This bill makes changes to these laws, including the following:

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1. The bill increases all of the registration-related fees for registering ATVs.

2. The bill creates a nonresident trail pass that is required to be displayed on any ATV that is being operated in this state on public trails and corridors and that is exempt from being registered by this state because the ATV is in the state for less than 15 consecutive days or because the ATV has been registered by an American Indian tribe or band that has an agreement with the state for registering ATVs. Current law requires nonresident stickers, which are similar to these ATV passes, for the operation of snowmobiles that are not registered by this state.

3. The bill broadens the provisions that exempt ATV operators from having to comply with certain regulations on private land. Under current law, a minor under the age of 12 (younger minor) may only operate an ATV if the operation is for an agricultural purpose not on a roadway and he or she is under the supervision of a person over 18 years of age or if he or she is operating a small ATV on a trail designated by the DNR. No safety certificate is required for younger minors.

A minor who is 12, 13, 14, or 15 years old (older minor) may not operate an ATV unless he or she has an ATV safety certificate or is accompanied by a person over 18 years of age. An older minor may operate an ATV on a roadway, as opposed to a trail, only for limited purposes and only if the minor has a safety certificate.

Under current law, none of the above restrictions apply to a minor if he or she is operating the ATV on land that is exclusively under the control of the minor's immediately family. This bill broadens the exemption to include any land that is not open to the public.

4. The bill requires that any person who is at least 12 years old and who is born on or after January 1, 1988, have a valid safety certificate issued by the DNR or a similar certificate issued by another state or Canadian province to operate an ATV. This provision does not affect the exemption for minors under the age of 12 who are authorized to operate ATVs without having a safety certificate under the limited circumstances described above.

5. The bill increases the penalties imposed on a person operating an ATV under the influence of an intoxicant or controlled substance if the person's alcohol level is above a given level. For example, if a person has an alcohol concentration level of 0.17 to 0.199 at the time of the offense, the minimum and maximum fines if convicted are doubled. Higher alcohol concentration levels result in the minimum and maximum fines being tripled and quadrupled.

6. The bill prohibits the manufacturing, sale, rental, or operation of an ATV that is constructed in such a manner that the noise from the ATV exceeds 96 decibels on the A scale as measured in compliance with rules promulgated by DNR. Current law only requires that an ATV muffler not produce excessive or unusual noise.

7. The bill increases the number of gallons used in calculating the estimated ATV gas tax payment from 25 to 52 gallons. The estimated payment is calculated for each fiscal year by multiplying the number of registered ATVs (except those registered only for private use) by this number of gallons and then multiplying this product by the excise tax imposed on gasoline and diesel fuel on the last day of February of the previous fiscal year.

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1 20.380 (1) (r) *All-terrain vehicle impact study.* Biennially, from the
2 conservation fund, the amounts in the schedule from moneys received from
3 all-terrain vehicle fees under s. 23.33 (2) (c) to (e) for the all-terrain vehicle impact
4 study under 2003 Wisconsin Act (this act), section 21 (1).

5 **SECTION 5.** 23.33 (1) (if) of the statutes is amended to read:

6 23.33 (1) (if) “Land under the management and control of a the person’s
7 immediate family” means land owned or leased by the person or a member of the
8 person’s immediate family over which the owner or lessee has management and
9 control. This term excludes land owned or leased by an organization of which the
10 person or a member of the person’s immediate family is a member.

11 **SECTION 6.** 23.33 (2) (a) of the statutes is amended to read:

12 23.33 (2) (a) *Requirement.* No person may operate and no owner may give
13 permission for the operation of an all-terrain vehicle within this state unless the
14 all-terrain vehicle is registered for public use or for private use under this subsection
15 or sub. (2g), is exempt from registration, or is operated with a reflectorized plate
16 attached in the manner specified under par. (dm) 3. No person may operate and no
17 owner may give permission for the operation of an all-terrain vehicle on a public an
18 all-terrain vehicle route or an all-terrain vehicle trail unless the all-terrain vehicle
19 is registered for public use under this subsection or sub. (2g).

20 **SECTION 7.** 23.33 (2) (c) of the statutes is amended to read:

21 23.33 (2) (c) *Registration; public use; fee.* Any all-terrain vehicle may be
22 registered for public use. The fee for the issuance or renewal of a registration
23 certificate for public use is ~~\$12~~ \$30.

24 **SECTION 8.** 23.33 (2) (d) of the statutes is amended to read:

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1 23.33 (2) (d) *Registration; private use; fee.* An all-terrain vehicle used
2 exclusively for agricultural purposes or used exclusively on private property may be
3 registered for private use. The fee for the issuance of a registration certificate for
4 private use is ~~\$6~~ \$15.

5 **SECTION 9.** 23.33 (2) (dm) 2. of the statutes is amended to read:

6 23.33 (2) (dm) 2. The fee for the issuance or renewal of a commercial all-terrain
7 vehicle certificate is ~~\$36~~ \$90. Upon receipt of the application form required by the
8 department and the fee required under this subdivision, the department shall issue
9 to the applicant a commercial all-terrain vehicle certificate and 3 reflectorized
10 plates. The fee for additional reflectorized plates is ~~\$12~~ \$30 per plate.

11 **SECTION 10.** 23.33 (2) (e) of the statutes is amended to read:

12 23.33 (2) (e) *Other fees.* The fee for the transfer of an all-terrain vehicle
13 registration certificate is ~~\$2~~ \$5. The fee for the issuance of a duplicate all-terrain
14 vehicle registration certificate, duplicate commercial all-terrain vehicle certificate
15 or duplicate registration decals is ~~\$2~~ \$5. The fee for the issuance of registration
16 decals to a county or municipality is ~~\$2~~ \$5. There is no fee for the issuance of
17 registration decals to the state.

18 **SECTION 11.** 23.33 (2j) of the statutes is created to read:

19 23.33 (2j) **NONRESIDENT TRAIL PASSES.** (a) In this subsection, “public all-terrain
20 vehicle corridor” means an all-terrain vehicle trail or other established all-terrain
21 vehicle corridor that is open to the public but does not include an all-terrain vehicle
22 route.

23 (b) Except as provided in par. (e), no person may operate an all-terrain vehicle
24 on a public all-terrain vehicle corridor in this state unless a nonresident trail pass
25 issued under this subsection is displayed on the all-terrain vehicle.

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1 (c) The fee for a nonresident trail pass issued for an all-terrain vehicle that is
2 exempt from registration under sub. (2) (b) 2. is \$17.25. A nonresident trail pass
3 issued for such an all-terrain vehicle may be issued only by the department and
4 persons appointed by the department and expires on June 30 of each year.

5 (d) There is no fee for a nonresident trail pass issued for an all-terrain vehicle
6 that is registered under sub. (2g) or s. 23.35. The department or Indian tribe or band
7 shall issue a nonresident trail pass for such an all-terrain vehicle when it issues the
8 registration certificate for the all-terrain vehicle. The department shall provide
9 Indian tribes or bands that register all-terrain vehicles under sub. (2g) or s. 23.35
10 with a supply of trail passes.

11 (e) An all-terrain vehicle that is registered under sub. (2) (a) or that is exempt
12 from registration under sub. (2) (b) 1., 3., or 4. is exempt from having a nonresident
13 trail pass displayed as required under par. (b). The department may promulgate a
14 rule to exempt all-terrain vehicles that are exempt from registration under sub. (2)
15 (b) 5. from having nonresident trail passes displayed as required under par. (b) or
16 may promulgate a rule to exempt owners of such all-terrain vehicles from having to
17 pay any applicable nonresident trail pass fee.

18 (f) 1. The department may appoint any person who is not an employee of the
19 department as the department's agent to issue nonresident trail passes and collect
20 the fees for these passes.

21 2. Any person, including the department, who issues a nonresident trail pass
22 shall collect in addition to the fee under par. (c) an issuing fee of 75 cents. An agent
23 appointed under subd. 1. may retain 50 cents of the issuing fee to compensate the
24 agent for the agent's services in issuing the pass.

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1 3. The department shall establish, by rule, procedures for issuing nonresident
2 trail passes, and the department may promulgate rules regulating the activities of
3 persons who are appointed to be agents under this paragraph.

4 **SECTION 12.** 23.33 (5) (b) of the statutes is repealed and recreated to read:

5 23.33 (5) (b) *All-terrain vehicle safety certificate.* 1. No person who is at least
6 12 years of age and who is born on or after January 1, 1988, may operate an
7 all-terrain vehicle unless he or she holds a valid safety certificate.

8 2. Any person who is required to hold an all-terrain vehicle safety certificate
9 while operating an all-terrain vehicle shall carry the certificate on the all-terrain
10 vehicle and shall display the certificate to a law enforcement officer on request.
11 Persons enrolled in a safety certification program approved by the department may
12 operate an all-terrain vehicle in an area designated by the instructor.

13 **SECTION 13.** 23.33 (5) (c) of the statutes is amended to read:

14 23.33 (5) (c) *Exceptions.* Paragraphs (a) and (b) do not apply to a person who
15 operates an all-terrain vehicle exclusively on land ~~under the management and~~
16 ~~control of the person's immediate family~~ that is not open to the public. Paragraphs
17 (a) and (b) do not apply to a person at least 12 years of age ~~but under 16 years of age~~
18 who holds a valid certificate issued by another state or a province of Canada.

19 **SECTION 14.** 23.33 (6m) of the statutes is created to read:

20 23.33 (6m) NOISE LIMITS. (a) No person may manufacture, sell, rent or operate
21 an all-terrain vehicle that is constructed in such a manner that noise emitted from
22 the all-terrain vehicle exceeds 96 decibels on the A scale as measured in the manner
23 prescribed under rules promulgated by the department.

24 **SECTION 15.** 23.33 (13) (ar) of the statutes is created to read:

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1 23.33 (13) (ar) *Penalty related to nonresident trail passes.* Any person who
2 violates sub. (2j) shall forfeit not more than \$1,000.

3 **SECTION 16.** 23.33 (13) (b) (title) of the statutes is amended to read:

4 23.33 (13) (b) (title) *Penalties related to ~~prohibited~~ intoxicated operation of an*
5 *all-terrain vehicle; ~~intoxicants; refusal.~~*

6 **SECTION 17.** 23.33 (13) (b) 2. of the statutes is amended to read:

7 23.33 (13) (b) 2. Except as provided under subd. 3., a person who violates sub.
8 (4c) (a) 1. or 2. or (4p) (e) and who, within 5 years prior to the arrest for the current
9 violation, was convicted previously under the intoxicated operation of an all-terrain
10 vehicle law or the refusal law shall be fined not less than \$300 nor more than ~~\$1,000~~
11 \$1,100 and shall be imprisoned not less than 5 days nor more than 6 months.

12 **SECTION 18.** 23.33 (13) (bg) of the statutes is created to read:

13 23.33 (13) (bg) *Penalties related to intoxicated operation of an all-terrain*
14 *vehicle; underage passengers.* If there is a passenger under 16 years of age on the
15 all-terrain vehicle at the time of a violation that gives rise to a conviction under sub.
16 (4c) (a) 1. or 2. or (4p) (e), the applicable minimum and maximum forfeitures, fines,
17 and terms of imprisonment under pars. (b) 1., 2., and 3. for the conviction are
18 doubled.

19 **SECTION 19.** 23.33 (13) (br) of the statutes is created to read:

20 23.33 (13) (br) *Penalties related to intoxicated operation of an all-terrain*
21 *vehicle; enhancers.* 1. If a person convicted under sub. (4c) (a) 1. or 2. had an alcohol
22 concentration of 0.17 to 0.199 at the time of the offense, the minimum and maximum
23 fines specified under par. (b) 3. for the conviction are doubled.

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1 2. If a person convicted under sub. (4c) (a) 1. or 2. had an alcohol concentration
2 of 0.20 to 0.249 at the time of the offense, the minimum and maximum fines specified
3 under par. (b) 3. for the conviction are tripled.

4 3. If a person convicted under sub. (4c) (a) 1. or 2. had an alcohol concentration
5 of 0.25 or above at the time of the offense, the minimum and maximum fines under
6 par. (b) 3. for the conviction are quadrupled.

7 4. The increased fines in this paragraph do not apply if the person convicted
8 under sub. (4c) (a) 1. or 2. is subject to par. (bg).

9 **SECTION 20.** 25.29 (1) (dm) of the statutes is amended to read:

10 25.29 (1) (dm) ~~For fiscal year 1991–92 and for each fiscal year thereafter, an~~
11 An amount equal to the estimated all-terrain vehicle gas tax payment. The
12 estimated all-terrain vehicle gas tax payment is calculated by multiplying the sum
13 of the number of all-terrain vehicles registered for public use under s. 23.33 (2) (c)
14 or (2g) and the number of reflectorized plates issued under s. 23.33 (2) (dm) on the
15 last day of February of the previous fiscal year by ~~25~~ 52 gallons and multiplying that
16 product by the excise tax imposed under s. 78.01 (1) on the last day of February of
17 the previous fiscal year.

18 **SECTION 21. Nonstatutory provisions.**

19 (1) From the appropriation under section 20.380 (1) (r) of the statutes, as
20 created by this act, the department of tourism shall expend not more than \$30,000
21 to conduct a study concerning the impact the recreational operation of all-terrain
22 vehicles has on statewide tourism and economic development. No later than June
23 30, 2005, the department of tourism shall distribute the results of the completed
24 study to the appropriate standing committees of the legislature in the manner
25 provided under section 13.172 (3) of the statutes.

SENATE BILL 277**1 SECTION 22. Appropriation changes.**

2 (1) STATE ALL-TERRAIN VEHICLE TRAIL MAINTENANCE. In the schedule under
3 section 20.005 (3) of the statutes for the appropriation to the department of natural
4 resources under section 20.370 (1) (ms) of the statutes, as affected by the acts of 2003,
5 the dollar amount is increased by \$165,000 for fiscal year 2004–05 for maintenance
6 of state all-terrain trails.

7 (2) STATE LAW ENFORCEMENT POSITIONS. In the schedule under section 20.005 (3)
8 of the statutes for the appropriation to the department of natural resources under
9 section 20.370 (3) (as) of the statutes, as affected by the acts of 2003, the dollar
10 amount is increased by \$556,000 for fiscal year 2004–05 to increase the authorized
11 FTE positions for the department by 4.0 SEG warden positions.

12 (3) ALL-TERRAIN VEHICLE SAFETY EDUCATION. In the schedule under section
13 20.005 (3) of the statutes for the appropriation to the department of natural
14 resources under section 20.370 (3) (as) of the statutes, as affected by the acts of 2003,
15 the dollar amount is increased by \$200,000 for fiscal year 2004–05 to increase the
16 authorized FTE positions for the department by 1.0 SEG education position and to
17 provide funding for all-terrain vehicle safety education activities.

18 (4) ALL-TERRAIN VEHICLE SAFETY PROGRAM. In the schedule under section 20.005
19 (3) of the statutes for the appropriation to the department of natural resources under
20 section 20.370 (5) (cx) of the statutes, as affected by the acts of 2003, the dollar
21 amount is increased by \$150,000 for fiscal year 2003–04 and the dollar amount is
22 increased by \$150,000 for fiscal year 2004–05 to increase funding for the purpose for
23 which the appropriation is made.

24 (5) ALL-TERRAIN VEHICLE EQUIPMENT. In the schedule under section 20.005 (3)
25 of the statutes for the appropriation to the department of natural resources under

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1 section 20.370 (3) (as) of the statutes, as affected by the acts of 2003, the dollar
2 amount is increased by \$100,000 for fiscal year 2003–04 and the dollar amount is
3 increased by \$100,000 for fiscal year 2004–05 to purchase equipment to determine
4 whether all-terrain vehicles comply with applicable noise limitations.

5 (6) COUNTY ALL-TERRAIN VEHICLE TRAILS. In the schedule under section 20.005
6 (3) of the statutes for the appropriation to the department of natural resources under
7 section 20.370 (5) (cu) of the statutes, as affected by the acts of 2003, the dollar
8 amount is increased by \$871,000 for fiscal year 2004–05 to provide aid to counties
9 for county all-terrain vehicle trails.

10 (7) COUNTY LAW ENFORCEMENT. In the schedule under section 20.005 (3) of the
11 statutes for the appropriation to the department of natural resources under section
12 20.370 (5) (er) of the statutes, as affected by the acts of 2003, the dollar amount is
13 increased by \$70,000 for fiscal year 2004–05 to provide aid to counties for all-terrain
14 vehicle law enforcement.

SECTION 23. Initial applicability.

15 (1) FEE INCREASE. The treatment of section 23.33 (2) (c), (d), (dm) 2., and (e) of
16 the statutes first applies to all-terrain vehicle registration certificates issued or
17 renewed on the effective date of this subsection.
18

19 (2) INTOXICATED OPERATION. The treatment of section 23.33 (13) (b) (title) and
20 2., (bg), and (br) of the statutes first applies to violations committed on the effective
21 date of this subsection, but does not preclude the counting of convictions that
22 occurred before the effective date of this subsection as prior convictions for purposes
23 of sentencing by a court.

24 **SECTION 24. Effective dates.** This act takes effect on April 1, 2004, or on the
25 day after publication, whichever is later, except as follows:

